

October 18, 2004

Great Lakes Basin Sustainable Water Resources Agreement and Compact
Comments by the Great Lakes Cities Initiative

Introduction

The Great Lakes are a natural resource of tremendous value that continue contributing significantly to the quality of life and well being of United States and Canadian citizens throughout the basin. As the provider of drinking water to millions of those citizens, the cities and other local units of government in this area have a great interest in preserving, protecting, and restoring this premier fresh water resource in the world. The Great Lakes Cities Initiative (GLCI), a group of mayors from the United States and Canada, are working together to advance the long term sustainability of the Great Lakes. GLCI commends the governors and premiers of the Great Lakes states and provinces, through the Council of Great Lakes Governors, for their outstanding effort to protect and restore the resource in the Great Lakes Sustainable Water Resources Agreement and Compact. The Agreement and Compact represent years of work with extensive stakeholder involvement to come up with a system to protect the Great Lakes. Both documents are sound and well thought-out, and we have some suggestions to further strengthen them.

The Agreement

The fundamental principles of the Agreement that require water conservation planning and the return of any new or increased diversion from the watershed back to the watershed are paramount. With the increased concern over fluctuating lake levels and all the implications arising from them, this approach must be taken. Also, having the state or provincial jurisdiction review diversions of one million gallons per day (MGD) or less, and the regional body review ones greater than one MGD, is appropriate. However, using a five MGD cutoff for consumptive uses or combined consumptive uses and diversions is not justified. There is the same threat to the watershed, and the same level of review should be imposed. The same one MGD cutoff should be applied. The small exception for diversions of less than 250,000 gallons per day from the return flow requirement is acceptable, provided that all the other conservation planning actions and safeguards of the standard apply for applicants. Related to the determination of the level for review is the use of a 120 day averaging period to determine the daily average. This is too long a time, and could lead to unacceptable impacts on the resource during the short term. A 30 day averaging period is more appropriate.

The specific elements of the standard are well conceived and should provide a firm basis for conducting reviews and protecting the resource. Although the guidance in Appendix 2 – Procedures Manual and the information about intent, applications, and criteria are helpful, there remains a risk that the application of them will be too subjective. Every effort must be made to assure objectivity and equitable application. To help with this,

there needs to be a very rigorous recording of decisions by the individual jurisdictions and the regional body, so that all participants in the process are aware of the decisions being made. There may also be value in having some independent, third party review built into some part of the process. In addition, there needs to be a comprehensive, holistic approach to the review, where each standard will be considered in the context of the others and of land use, transportation, and other components of sound planning.

It is also important to have some way to review compliance with the standards after the approval has been granted. As good a job as the applicant and reviewers may do, there are enough uncertainties in this area of science to make a feedback loop necessary to evaluate how the actual withdrawal and the steps the applicant has taken are affecting the resource. Some form of post approval monitoring and reporting to the jurisdiction is needed, and should be included in the approval itself. This will also help in assessing cumulative impacts, which are a very important part of the Agreement.

Public participation is an essential element to the implementation of the Agreement, and the provisions are appropriate. At the same time, it is very important that applicants for new or increased withdrawals have a degree of certainty and predictability in the timeline for action and the outcome of the process.

Looking to the elements of the standard itself, GLCI will highlight several things. We have no specific comments on the “no reasonable alternative: and “reasonable quantities” elements, other than to underscore their importance. As to returning the withdrawal to the basin, we agree with the limited exception spelled out in the Agreement as to return flow provided all the other parts of the standard apply. Also related to this, there should be especially close scrutiny where there is a withdrawal from one source in the basin, such as groundwater, and return in the same watershed, but to another water body, such as surface water. In addition to concern about the quantity of the water returned, the quality of the water is also very important.

The “no significant adverse impact” part of the standard will probably be one of the most difficult to apply. This analysis needs to be very case specific as to the withdrawal and resource specific as to the source of the water.

The requirement for a conservation plan is most appropriate, as are the suggested measures which represent a good list of options for cities to consider, although not all will fit the needs of a given city. From the municipal experience, one of the most productive areas for conservation is the prevention of water losses, and that should be highlighted. Documenting best practices, stating specific conservation measures and goals, and then documenting achieved conservation through monitoring and reporting, should be an applicant requirement.

Analysis of the “resource improvement” standard will be another challenge, and it is especially important to consider this in the context of the “adverse impact” element.

When considering “resource improvement” measures, the analysis needs to include consideration of unintended consequences, such as removal of a dam that would lead to the spread of invasive species.

Concerning compliance with applicable laws, the reference is to all applicable state, provincial, and federal laws. Local laws need to be included.

The Compact

The Compact calls for a Great Lakes Basin Water Resources Council and spells out its responsibilities in the review process. The Agreement creates a Great Lakes Basin Water Resources Regional Body with similar responsibilities. It is not clear what the difference is between the two entities, and that should be spelled out.

The Compact has a section identified as “enforcement.” It includes provisions for authority to compel compliance with any order or approval, for review of the decisions of the jurisdictions or the council, for suspension of the rights of a signatory party, and to compel compliance with the terms of the Compact. This is a broad mix of a variety of authorities, and it would be more accurate to call the section “enforcement and review.”

The requirement for the parties to have measures for efficient use and conservation of waters in the Great Lakes Basin is good, but the language should be strengthened to assure that this is given a very high priority and that there is full implementation.

Conclusion

The Great Lakes Cities Initiative and its members look forward to working with the states and provinces to make sure that there is full, effective, and efficient implementation of this historic Agreement and Compact that is so important to the future of the Great Lakes.